REMARKS

This correspondence is filed in response to the Final Office Action dated January 23, 2003 and in lieu of an Appeal Brief in response to the Notice of Appeal filed July 23, 2003. Applicants initially note with appreciation the thoroughness with which the Examiner has examined the application as evidenced by the Office Action.

In response to the Office Action, Applicants have amended independent Claims 1, 10, 18, 21, and 24 to more clearly define the claimed invention. In addition to these amendments, Applicants have also added new claims 25-48. The newly added claims include independent Claims 25, 33, 41, 43, and 45-48, each of which recite further patentable features of the present invention.

Applicants have reviewed the rejections raised by the current Office Action. Based on this review, Applicants respectfully submit that the claims as now presented are patentable over the cited references. As such, Applicants respectfully request reconsideration of the claims based on the remarks provided below and that a Notice of Allowance as to all claims be issued.

I. Amendments to the Specification

In reviewing the patent application, Applicants noted an error in the specification. Specifically, in the paragraph appearing at page 2, lines 7-11, the word "letters" was inadvertently used in place of the word "offers." Applicants have hereby amended this paragraph to properly include the word "offers."

II. Summary of Claim Rejections

In previous rejections, it has been argued that the combination of U.S Patent No. 5,857,175 to Day et al. with U.S. Patent No. 6,230,143 to Simons et al. renders Claims 1-15, 18, and 21-24 obvious under 35 U.S.C § 103(a). Specifically, it has been alleged that the '175 Day patent discloses all recitations of independent Claim 1, except for

determining which initiatives were effective based on hit rate. For this reason, the '143 Simons patent has been cited as evidencing evaluation of initiatives based on hit rate. Applicants respectfully disagree with these rejections and instead, respectfully submit that all of the claims are patentable over the cited combination as discussed more fully below.

III. Brief Description of the Invention

The present invention provides a unique system for creating marketing initiatives for display to potential customers. Specifically, the present invention provides systems and methods that allow a user to evaluate an initiative prior to its implementation. The user inputs the initiative, and the systems and methods of the present invention evaluate the initiative using stored statistics associated with other past initiatives. The results of this evaluation are provided to the user. Only after the user has reviewed the evaluation results and indicated that they are satisfied is the new initiative saved for subsequent use.

The present invention provides several advantages over other conventional systems. Specifically, many conventional marketing initiative systems do not allow a user to evaluate a new initiative before it is implemented. Instead, these systems only provide marketing analysis to the user after the initiative has been put in to use. Specifically, after the initiative has been used for a period of time, these conventional systems collect data on the successfulness of the initiative and provide this information to the user. It is only at this point that the user can evaluate whether the initiative was well chosen or whether there are marketing issues with the initiative.

This conventional process can be quite costly to the user and in some instances may destroy the user's entire marketing opportunity. For example, if the initiative is a special on items that have a time sensitive deadline, failure by the user to create a proper initiative in the first place may not be realized until it is too late. For example, let's say the user is selling a toy that has been specialized for Christmas. Using a conventional system, the user would enter the marketing initiative for the toy and wait for a specified time period, (days, weeks, etc.), to

determine how the initiative was working. If the results are not favorable, the user must then alter the initiative and wait another time period to see how customers are reacting to the initiative. Obviously, if there are flaws in the first few iterations of the user's initiative, the user may experience a large amount of lost sales during her critical sales period, while she is trying to rework the initiative. (As Applicants will discuss later below, the systems of the '175 Day and '143 Simons patents are similar to this type of conventional system.)

However, using the system of the claimed invention, the user can fix issues with the new initiative prior to it ever being implemented. Specifically, after the user enters the initiative, the system of the claimed invention uses statistics associated with other past initiatives to determine the effectiveness of the new initiative. The user can review these results and tweak parameters of the initiative until the user is satisfied that the new initiative will meet her goals. Only then is the initiative entered for subsequent use. In this way, the user can work the kinks out of the initiative prior to its implementation, thereby decreasing the number of loss sales that would occur if the initiative had been used in its first conceived form without benefit of the analysis performed by the claimed invention. In short, the claimed invention allows the user to have a better idea of possible success of the initiative without having to wait for initial results of the initiative to be analyzed. The user can thus put a correct initiative in place at the out set instead having to waste valuable days and months wondering whether the initiative is working or has issues.

IV. Independent Claims 47 and 48 are Patentable

In previous Office Actions, it has been indicated that Claims 16, 17, 19, and 20 include allowable subject matter and would be allowed if rewritten in independent form. Independent Claim 47 is Claim 16 rewritten into independent form including all the recitations of the claims from which Claim 16 depends. As such, independent Claim 47 should be allowable. Independent Claim 48 is a method claim including the recitations of Claim 47 in method form. As such, Claim 48 should be patentable for the same reasons Claim 47 is patentable.

V. Special Notes Concerning Independent Claims 1, 10, 21, and 24

In previous responses, Applicants have argued the cited references do not teach or suggest evaluating hit rate of previous initiatives. With regard to these recitations, it has been suggested that the '175 Simons patent discloses hit rates as it discusses tracking coupon redemption. Applicants have argued that "hit rate" in the context of the claims means the number of times that an initiative was determined to be relevant to a customer request and that this is something different than tracking coupon redemption. Further, Applicants have argued that the term "hit rate" is not properly associated with coupons, as the accepted term for coupons is "redemption," and that "hit rate" is not equal to redemption. In response to these Arguments, the Examiner has stated that first the claims do not include Applicants' argued definition of hit rate and secondly, Examiner does not believe that there is support for such a definition in the specification.

In response to these arguments, Applicants have amended independent Claims 1, 10, 21, and 24 to further recite that "hit rates indicate the number of times an initiative was selected as being relevant to a customer request." Applicants respectfully submit that there is more than adequate support for this definition in the specification. Specifically, at page 8 lines 9-17, the specification discloses the use of a trend analysis unit that utilizes aggregated statistics from past initiatives to determine previous marketing trends and to forecast the effectiveness of planned, but not yet implemented initiatives. Further, the specification states that the aggregated statistics includes hit rates.

The fulfilling of a consumer's request and gathering of the aggregated statistics is discussed with regard to Figure 8 at page 14, line 7 – page 15, line 3. Specifically, the system receives a request from a user and extracts key-paths from the request. The key-paths are then compared to key-paths associated with stored initiatives. The resulting matches are then scored, and the most targeted initiatives are selected. Importantly, the specification states that after the initiatives have been selected, offer update tracking is performed to update message usage statistics. A log of inbound request parameters and the corresponding selected initiatives is

created to aid in future searches. Further, the specification states that the statistics are maintained for future trend prediction.

What is most important to note, is that as illustrated in blocks 830-840 of Figure 8 and in the specification at page 14, line 22 – page 15, line 7, the statistics are gathered prior to sending the results to the user making the request. In other words, the specification discloses that the hit rate statistics are gathered prior to display of the results of the request to the user. As illustrated in Figure 8, the statistics are gathered in block 830, but the results of the search are not presented to the user until block 840. As such, the specification discloses that the hit rate statistics gathered by the present invention are not based on what initiatives the user selects, but instead are based on the number of initiatives that met with the user's request. Thus, Applicants respectfully submit that there is adequate disclosure in the specification to support the recitation in the claims that the "hit rate" indicates the number of times an initiative was selected as being relevant to a customer request.

With regard to patentability, Applicants respectfully submit that none of the cited references, taken either individually or in combination, teaches or suggests determining a likelihood that the new initiative will be effective . . . using stored statistics reflecting hit rates where the hit rates indicate the number of times an initiative was selected as being relevant to a customer request. As discussed in previous responses, the '175 Day patent does not discuss analysis of hit rate data at all. Further, as argued in previous responses, evaluation of redemption of coupons is not the same as evaluating hit rates associated with how many times and initiative was deemed relevant to a request. Coupon redemption tells you how many times a coupon was used. It does not tell you how many times the coupon may have been relevant to a customer's request. There is no way to equate coupon redemption with hit rate based on number of times an initiative was relevant to a request. These are different criteria with different answers. In light of this, Applicants respectfully submit that independent Claims 1, 10, 18, 21, and 24 are patentable for at least this reason. (Applicants note additional reasons why Claims, 1, 10, 18, 21, and 24 are patentable in Section VI. below.).

VI. Independent Claims 1, 10, 18, 21, 24, 25, and 33 are Patentable

As discussed in Section III above, the claimed invention allows a user to evaluate a new initiative prior to the new initiative being placed in use. Specifically, as recited in independent Claims 1, 10, 18, 21, 24, 25, and 33, the claimed invention determines a likelihood that the new initiative will be effective using stored statistics associated with other past initiatives. Applicants respectfully submit that the cited references, taken either individually or in combination, do not teach or suggest this aspect of the claimed invention.

In particular, Applicants respectfully submit that the '175 Day patent does not teach or suggest evaluating a new initiative against stored statistics associated with other past initiatives prior to use of the new initiative. Instead, like the conventional system discussed in Section III above, the system of the '175 Day patent only evaluates the initiative after it has been put into use. Further, it appears to only evaluate the initiative based on its own statistics and not statistics associated with other past initiatives. Specifically, at col. 8, lines 9-23, the '175 Day patent discloses use of a supervisor computer that generates a report indicating whether a targeted special offer increased a user's sales. (Note the past tense on the word "increased."). The '175 Day patent states that the supervisor computer uses data collected by store level computers to determine if special offers were accepted and with what amount of success. As the system of the '175 Day patent looks at the amount that a special offer was accepted and alerts the user of how much the offer increased the user's sales, this is an after the fact analysis. Nowhere does the '175 Day patent teach or suggest performing such analysis prior to implementation of the special offer. The '175 Day patent merely discloses determining what has happened as opposed to performing a pre-analysis of the possible impact of an initiative. As such, a user of the system of the '175 Day patent cannot know prior to implementation of the initiative whether the initiative will have satisfactory results.

Applicants further submit that the '143 Simons patent also does not teach or suggest evaluating a new initiative against stored statistics associated with other past initiatives prior to use of the initiative as is recited in the claims. Applicants respectfully disagree with past characterizations of the '143 Simons patent as disclosing prediction of the "likelihood that a new

initiative will be effective using stored statistics based on characteristics from past initiatives such as purchasing trends, group buying behavior and individual price sensitivity." Specifically, while the '143 Simons patent may make evaluations of the performance of coupons, all evaluations performed by the system of the '143 Simons patent are performed after the initiative has been implemented, not prior to implementation of the initiative.

Applicants direct the Examiner's attention to the disclosure located at col. 9, line 59 – col. 10, line 6. The '143 Simons patent states that the reports are ran on the resultant consumer response rate to the coupon promotion. Based on this report, the system determines whether the coupon promotion should be modified, with subsequent results being reviewed for the continued coupon promotion. See col. 9, line 62 – col. 10, line 1. Further the '143 Simons patent states if the results of the promotional campaign have not been successful, then a decision will be entered to stop the promotional. In other words, the '143 Simons patent discloses performing analysis only after the coupon has been in use for a period of time. The '143 Simons patent nowhere teaches or suggests analyzing a new coupon against stored statistics associated with other past coupons prior to use of the coupon. It only teaches evaluating a coupon after it has been used and only with statistics from the coupon itself, not statistics associated with other past initiatives.

While the '143 Simons patent does discuss gathering statistics such as "purchasing trends, group buying behavior and individual price sensitivity," it nowhere teaches or suggests use of such statistics to evaluate new initiatives and compare new initiatives to these statistics.

Applicants must respectfully stress that they no where found in either of the cited references any discussion concerning evaluating a new initiative prior to use of the new initiative or use of statistics associated with other initiatives to evaluate the new initiative. All disclosure in these references are with regard to testing the initiative after it is already in use and only using its own data. Applicants would also disagree with any arguments that may be raised that such evaluations as recited in the claims would be inherent in the cited references. Applicants would contend that such a line of argument would be impermissible use of hindsight. Applicants would instead argue that silence by both the '175 Day and '143 Simons patents concerning evaluating a new initiative prior to its use is evidence that such pre-use evaluations as are recited in the claims of the present application are non-obvious and thus patentable.

Specifically, both of the references recognize the need to collect data on initiatives and use this data to determine the success of an initiative. These references clearly understand the need to evaluate an initiative. However, because neither of the cited references discusses the importance of performing a pre-analysis on an initiative, it is apparent that neither Day et al. nor Simons et al. thought about such a pre-analysis of a new initiative. As both Day et al. and Simons et al. are ones skilled in the art and neither of them thought of doing the type of pre-analysis recited in the claims of the present invention, Applicants respectfully submit that this is more than adequate evidence indicating that the claimed invention is non-obvious from the cited references and thus patentable. The '175 Day and '143 Simons patents are evidence that pre-analysis of new initiatives is non-obvious, as neither of these patentees discloses such evaluations.

In light of the above, Applicants respectfully submit that independent Claims 1, 10, 18, 21, 24, 25 and 33, as well as the claims that depend therefrom, are patentable over the cited references.

VII. Independent Claims 41 and 43 are Patentable

Independent Claims 41 and 43 recite further features related to evaluation of the likelihood that a new initiative will be effective. Specifically, the claims recite that the system extracts key values from the new initiative, structures them into key-paths, and compares the key-paths associated with the new initiative with key-paths associated with past initiatives. As discussed above, Applicants did not see any disclosure in either the '175 Day patent or the '143 Simons patent disclosing comparison of a new initiative with other past initiatives. Further and importantly, Applicants do not see any teachings or suggestions concerning extraction of keys from the new initiative, structuring them in to key-paths, and comparing them to key-paths of past initiatives.

In this regard, Applicants do take note of an earlier discussion raised in a previous Office Action with regard to Claim 8 of the application. Claim 8 is different from Claims 41 and 43, as Claim 8 discusses comparing a customer availability request with stored initiatives, not comparing a new initiative with stored initiatives. However, Applicants are concerned that an

analysis similar to that against Claim 8 will be used against Claims 41 and 43. A previous Office Action stated that the '175 Day patent discloses extraction and comparison of key-paths. Specifically, with regard to Claim 8, a previous Office Action stated that the '175 Day patent at col. 6, lines 19-33 discloses extracting and structuring key-paths from a request and comparing it with key-paths of stored initiatives. In reality, the '175 Day patent discloses looking to see if a product being purchased by a consumer is one of a list of items that a discount is available for and giving the consumer the discount. Applicants fail to see how this equates to extracting and structuring key-paths as recited in the claims. What part of this disclosure would teach or suggest the claimed recitations? Applicants see no extraction, structuring, or comparison of key-paths. Associating an identification of a product with a list of products does not equate or suggest extraction, structuring, and comparison of key-paths.

Notwithstanding this point, Claims 41 and 43 are different from Claim 8 as they are directed to extraction of key-paths from new initiatives and comparison of these key-paths associated with previous initiatives. The cited references nowhere teach or suggest comparing key-paths of a new initiative with key-paths of other past initiatives. Specifically, in the sections of the '175 Day patent and the '143 Simons patent discussing evaluating initiatives, they nowhere discuss extracting and structuring key-paths or comparison of key-paths. As such, Applicants respectfully submit that independent Claims 41 and 43 are patentable over the cited references.

VIII. Independent Claims 45 and 46 are Patentable

Independent Claims 45 and 46, among other things, recite comparing contract obligations associated with the user with the initiative to determine whether the initiative violates any of the user's contract obligations. This aspect of the claimed invention is disclosed at page 9, lines 8-13 and page 10, line 16 of the patent application. Specifically, the claimed invention ensures that a new initiative entered by a user does not violate a user's contract. For example, if a user is restricted from making offers to a certain group of customers and the new initiative proposed by the user does not include such a restriction, the system will note this and alter the initiative to conform with the contract. Applicants respectfully submit that none of the cited references, taken

either individually or in combination, teaches or suggests this aspect of the claimed invention, and as such, respectfully submits that independent Claims 45 and 46 are patentable.

CONCLUSION

In view of the amended specification, amended claims, added claims, and the remarks presented above, it is respectfully submitted that all of the present claims of the application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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~~Elaine Kelly~~ W. Kevin Ransom